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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/049,357

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Seiji Asaoka

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10/30/2008

AKZO NOBEL INC.

LEGAL & IP

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EXAMINER

MCMILLIAN, KARA RENITA

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

10/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/049,357</p>	<p><b>Applicant(s)</b> ASAOKA ET AL.</p>	
	<p><b>Examiner</b> KARA R. MCMILLIAN</p>	<p><b>Art Unit</b> 1617</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 25 September 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/SREENI PADMANABHAN/  
Supervisory Patent Examiner, Art Unit 1617

/Kara R. McMillian/  
Examiner, Art Unit 1617

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments that the polyurethane resin of Bhatt et al. differs from the amphoteric urethane resin of the present invention since the polyurethane resin of Bhatt et al. does not include a polyol and tertiary amines used in polymerizing the amphoteric urethane resin as claimed in the instant are found not persuasive. The instant invention utilizes a polyol chosen from polyester polyol or polyether polyol. Bhatt et al. utilizes alkylene glycol which renders obvious polyether polyol. The instant invention utilizes tertiary amines whereas Bhatt et al. broadly teaches the use of amines. Thus all forms of amines are contemplated. Furthermore Kim et al. provides motivation for the use of tertiary amines in the composition of Bhatt et al. Applicants also argue that Bhatt et al. does not teach or suggest cosmetic compositions that further include a water-soluble resin. The examiner respectfully disagrees. Bhatt discloses that the hair spray compositions contain a variety of conventional optional ingredients including emulsifiers, such as anionic or nonionic surfactants, preservatives, cationic conditioners, such as cetyl trimethyl ammonium chloride, coloring agents, etc. Additionally the aqueous formulations can contain plasticizers such as glycols, phthalate esters, glycerine, silicones, protein hydrosylates, emollients, lubricants, penetrants, lanolin compounds, ethylene adducts and polyoxyethylene cholesterol. Thus Bhatt discloses water-soluble polymers (anionic and nonionic surfactants, silicones, protein hydrosylates, ethylene adducts, and polyoxyethylene cholesterol) other than the amphoteric urethane resin. The applicant's have stated, that one skilled in the art (not one of ordinary skill) would know that anionic and nonionic surfactants and cationic conditioners are NOT (applicant's emphasis) water soluble polymers and would not provide durability (hold) to a cosmetic composition. The examiner respectfully disagrees with this blanket statement and direct applicant's to US Patent No. 4369037 (previously provided), wherein water-soluble keratin derivatives (protein hydrosylate-see col. 4 lines 35-50) and water soluble silicones (see examples 12 and 13) are disclosed for use in hair treatment cosmetics. These references are solely included for the refutation of the applicant's arguments and are not needed nor utilized in the formulation of the 103 rejection. Regardless of their purpose, Bhatt et al. does disclose the addition of water soluble resins in the claimed cosmetic composition which is what is claimed in the instant application. The purpose of the addition of the water soluble resin is given little patentable weight. Applicants arguments regarding the combination of prior art references by de la Poterie et al. and Bolich et al. are also not persuasive. Applicants must consider the rejections as a whole. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). For the reasons detailed above and for reasons of record the rejections of claims 10-14 and 16-20 under 35 USC 103 detailed in the last office action are maintained.